

Exhibit 181

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.
Civil Action No. 07-10248-PBS

Exhibit to the July 24, 2009, Declaration of James J. Fauci
In Support of Plaintiff's Motion for Partial Summary Judgment and
In Opposition to the Roxane Defendants' Motion For Partial Summary Judgment



experience *does* matter

CASE: In Re: Pharmaceutical Average Wholesale Price Litigation
DATE: May 15, 2007

Enclosed is the Original of the transcript of the testimony of **Scully, Thomas A.** along with the errata sheet in the above-titled case. Please have the witness read the deposition and sign the signature page before a Notary Public.

After the signature page has been notarized, please return the original transcript and errata sheets to the custodial attorney within 30 days of receipt for proper filing.

Thank you for your attention to this matter and please feel free to contact us with any questions or concerns.

Sincerely,

Henderson Legal Services

Encl.

Henderson Legal Services
Phone: 202-220-4158
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1 Videotaped Deposition of THOMAS A.

2 SCULLY, a witness herein, called for examination by
3 counsel for Abbott Laboratories in the above-entitled
4 matter, pursuant to subpoena, the witness being duly
5 sworn by SUSAN L. CIMINELLI, a Notary Public in and
6 for the District of Columbia, taken at the offices of
7 Jones Day, 51 Louisiana Avenue, Northwest,
8 Washington, D.C., at 8:49 a.m. on Tuesday, May 15,
9 2007, and the proceedings being taken down by
10 Stenotype by SUSAN L. CIMINELLI, CRR, RPR, and
11 transcribed under her direction.

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1 THE VIDEOGRAPHER: Sir, you're going to
2 want to repeat that answer.

3 THE WITNESS: Sorry. I said clearly
4 volume of sales was affected in a tangible way by the
5 spread available to the provider. Same thing
6 happened with Taxitier and Taxol for a couple of
7 years.

8 BY MR. DALY:

9 Q. And beyond situations where two drugs are
10 competing allegedly based on the spread between AWP
11 and actual acquisition costs, are there any other
12 situations in which you believe manufacturers would
13 be gaming the system?

14 MR. GOBENA: Objection to form.

15 THE WITNESS: I'm not sure I'm in a
16 position to give you examples of that.

17 BY MR. DALY:

18 Q. Well, I'm asking you because, again, you
19 said that manufacturers -- there is a possibility
20 that the system could be gamed by manufacturers. And
21 my -- you've given me one example. I'm asking you if
22 there are any other examples.

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1 A. Yes. I mean, gamed is a, you know,
2 clearly the ipratropium bromide and albuterol
3 example, the higher you cranked up your AWP, the
4 better the margin, the more likely it was that
5 somebody was going to buy your product and sell it to
6 beneficiaries for higher margin. And that's just
7 human nature. I'm not saying it was -- it's not my
8 place to make a judgment about the legality of it.
9 I'm just saying the policy was indefensible and
10 needed to be fixed.

11 Q. The policy of allowing reimbursement to be
12 based on AWP?

13 A. The policy of allowing people to make up
14 their AWP and have the government pay 95 percent of
15 it.

16 Q. In situations where -- and we talked about
17 this briefly earlier -- but in situations where you
18 have several manufacturers participating in a single
19 J Code with generic substitutes for each other, that
20 kind of gaming does not occur, is that correct?

21 MR. GOBENA: Objection to form.

22 THE WITNESS: I think that's fair. I'm

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